
Financial Institutions & Insurance Committee

SSB 5659

Brief Description: Authorizing the consideration of mitigating factors for enforcement actions under the mortgage broker practices act.

Sponsors: Senate Committee on Financial Institutions, Housing & Insurance (originally sponsored by Senators Berkey, Benton and Marr).

Brief Summary of Substitute Bill

- Establishes some mitigating factors that the Director of the Department of Financial Institutions may consider in certain investigation and enforcement actions.

Hearing Date: 3/17/09

Staff: Jon Hedegard (786-7127)

Background:

The Department of Financial Institutions (DFI) licenses mortgage brokers and loan originators under the Mortgage Broker Practices Act (MBPA). The MBPA has provisions regarding licensing, continuing education, prohibited practices, examinations, investigations, and criminal, civil, and administrative penalties. The Director of the Department of Financial Institutions (Director) may impose fines, order restitution, and suspend or revoke a license for violations of the MBPA.

The DFI has adopted rules regarding what the DFI may consider in an effort to determine who is responsible when a violation of the act has occurred. Among the factors the DFI may consider are:

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- the adequacy of any background and experience investigation conducted prior to hiring or contracting with any person;
- the adoption of policies and procedures for: (1) supervision and training, (2) monitoring continuing education requirements and legal compliance under the MBPA, (3) regularly reviewing work performed, (4) training in the requirements of the MBPA and rules and (5) acting on reports of alleged misconduct;
- adopting a system of review for implementation and compliance with the policies and procedures;
- providing copies of the MBPA and rules; and
- the frequency and completeness of review conducted on work performed by any person subject to the MBPA.

Any proceedings and appeals related to a license denial, a cease and desist order, suspension or revocation of a license, and the imposition of civil penalties or other remedies issued under the MBPA are governed by the provisions of the Administrative Procedure Act, chapter 34.05 RCW.

Summary of Bill:

The Director may consider circumstances that mitigate the seriousness of a violation in any investigation or any enforcement action if:

- a licensee voluntarily discloses the deliberate and knowing violation by an employee or independent contractor loan originator; and
- the violation was intended to be concealed from the licensee.

Potentially mitigating factors include:

- whether the licensee voluntarily disclosed of the violation or activity;
- the timeliness of the disclosure;
- the likelihood that the Director would have discovered the violation in a timely fashion without that voluntary disclosure;
- the cooperation of the licensee during any investigation;
- any remedial measures taken to correct any flaws in internal procedures to protect against any future violations;
- whether the licensee has business practices that include specific procedures;
- whether the violation should have been reasonably anticipated;
- whether the violation was a matter of inadvertence, simple negligence, or gross negligence;
- a positive score or report obtained in any prior audits; and
- any other mitigating factors adopted by the director by rule.

The Director must pursue the employee or independent contractor loan originator who committed the violation if the violation was:

- voluntarily disclosed by a licensee;
- the result of a deliberate and knowing violation by an employee or independent contractor loan originator; and
- intended to be concealed from the licensee.

The mere disclosure by the licensee alone must not trigger an examination or investigation of the licensee if the violation was:

- voluntarily disclosed by a licensee;
- the result of a deliberate and knowing violation by an employee or independent contractor loan originator; and
- intended to be concealed from the licensee.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.